

R865. Tax Commission, Auditing.

R865-9I. Income Tax.

R865-9I-2. Determination of Utah Resident Individual Status Pursuant to Utah Code Ann. Section 59-10-103.

(1) Domicile.

(a) Domicile is the place where an individual has a permanent home and to which he intends to return after being absent. It is the place at which an individual has voluntarily fixed his habitation, not for a special or temporary purpose, but with the intent of making a permanent home.

(b) For purposes of establishing domicile, an individual's intent will not be determined by the individual's statement, or the occurrence of any one fact or circumstance, but rather on the totality of the facts and circumstances surrounding the situation.

(i) Tax Commission rule R884-24P-52, Criteria for Determining Primary Residence, provides a non-exhaustive list of factors or objective evidence determinative of domicile.

(ii) Domicile applies equally to a permanent home within and without the United States.

(c) A domicile, once established, is not lost until there is a concurrence of the following three elements:

(i) a specific intent to abandon the former domicile;

(ii) the actual physical presence in a new domicile; and

(iii) the intent to remain in the new domicile permanently.

(d) An individual who has not severed all ties with the previous place of residence may nonetheless satisfy the requirement of abandoning the previous domicile if the facts and circumstances surrounding the situation, including the actions of the individual, demonstrate that the individual no longer intends the previous domicile to be the individual's permanent home, and place to which he intends to return after being absent.

(2) For purposes of determining whether an individual spends in the aggregate 183 or more days of the taxable year in this state, a "day" means a day in which the individual spends more time in this state than in any other state.

(3) Determination of resident individual status for military servicepersons.

(a) The status of a military serviceperson as a resident individual or a nonresident individual is determined as follows.

(i) A resident individual in active military service does not lose his status as a resident individual if the resident individual's absence from the state is a result of military orders.

(ii) A nonresident individual in active military service who is stationed in Utah does not become a resident individual for income tax purposes if the nonresident individual's presence in Utah is due solely to military orders. (b) Subject to federal law, an individual in active military service may change from a resident individual to a nonresident individual or from a nonresident individual to a resident individual if he establishes that he satisfies the conditions of Subsection (1) (c).

(c) A nonresident individual serviceperson is exempt from Utah income tax only on his active service pay. All other Utah source income received by the nonresident individual serviceperson is subject to Utah income tax as provided by Section 59-10-116.

(d) The spouse of an individual in active military service generally is considered to have the same residency status as that individual for purposes of Utah income tax.

KEY: historic preservation, income tax, tax returns, enterprise zones

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